



# ADR NEWSLETTER

Alternative Dispute Resolution Program Office

March 2004

## Focus Points

- The Data Is In--Air Force ADR Program has Stellar Year
- SAF/GCD Plans Implementation of AFI 51-1201 in Anticipation of Final Approval
- HQ ADR Program Office Launches New Initiatives to Take ADR to the Field – Conferences, Mediation Certification and more...

## The Bottom Line



Joseph M. McDade  
Deputy General Counsel  
for Dispute Resolution

Welcome to the inaugural edition of the Air Force ADR Quarterly Newsletter! Whether you're an Air Force mediator, EEO or Civilian Personnel specialist, or just interested in how ADR can make a positive impact on your organization, I hope you'll find it interesting, informative, and useful.

Fiscal Year 2003 turned out to be a great year for ADR in resolving Air Force workplace disputes. The numbers tell the whole story: Of the 6,000 disputes reported to us, over 2,700 used an ADR process, and 2,000 were resolved using ADR, saving Air Force organizations time and money, and involving employees in the resolution of their own workplace grievances and complaints. These results didn't just happen; they're the product of hard work and dedication by Air Force ADR, EEO, and Civilian Personnel specialists at every level, MAJCOM to base. I want to say "Thank You" for making FY 2003 such a huge success, and to offer a challenge to make FY 2004 even better!

The big news this year is the implementation of the new National Security Personnel System passed last November by Congress. This will present monumental challenges to everyone in DoD and the Air Force. But it also presents some tremendous opportunities, particularly in the area of managing and resolving workplace conflicts. SAF/GCD is working with AF/DPP on several initiatives over the next several months to help Air Force personnel cope with the inevitable conflicts that will arise with so major a change. Stay tuned for additional information in future editions of the Newsletter.

Finally, as with any newsletter, we want to report news! We'd love to hear from you--tell us what you're doing at your base, or things that have worked for you in managing conflict and dispute resolution, or ideas for future articles. This is your Newsletter, so tell us how to make it better!

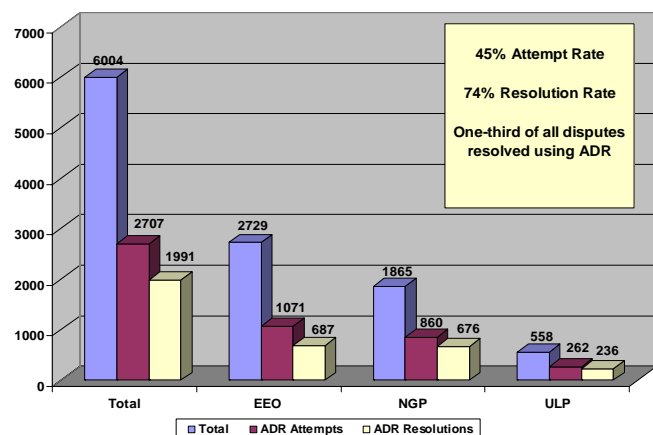
- Joseph M. McDade

## FY 2003 ADR Data Shows ADR Program Improvement Air Force Wide

The Air Force ADR Program Office recently concluded its FY 2003 data call. The results are in, and once again the Air Force has had a stellar year and continues to improve in both the EEO and labor relations' fields.

The Air Force FY03 overall ADR resolution rate of 74% is one of the highest on record, and easily exceeds the 70% rate set as the ADR Program goal. Likewise, the number of ADR attempts and the ADR attempt rate improved over the previous year, exceeding the ADR Program's 40% goal.

Air Force FY 2003 Dispute Data



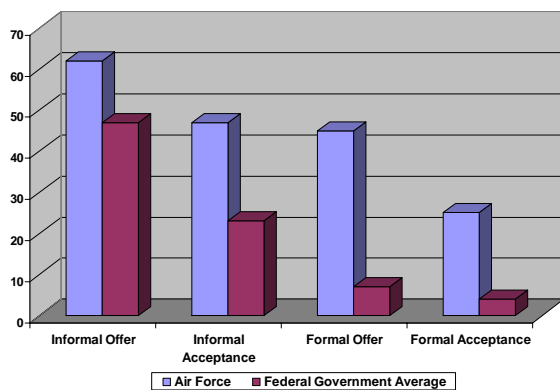
Particularly significant is ADR use in non-EEO cases (grievances, Unfair Labor Practice cases, Merit Systems Protection Board appeals, and other disputes). In FY03, the Air Force attempted ADR in over half of all non-EEO workplace disputes, and resolved an astounding 80% of those cases.

Although the ADR figures for EEO informal and formal complaints were somewhat more modest, ADR use in formal EEO complaints surged upward, with ADR attempted in 38.96% of the cases, almost identical to the 39.34% of informal complaints in which ADR was attempted. (Continued on page 2)

Although we can still improve, the Air Force ADR use rates in EEO matters markedly exceed the rates of the Federal Government as a whole, based on EEOC statistics.

According to its annual report to the EEOC,<sup>[1]</sup> the Air Force processed 1748 informal EEO matters in FY03, offered ADR in 1085 of them, and had ADR accepted by both parties in 509. These figures translate into an ADR offer rate of 62%, and an acceptance rate of 47%. In formal cases, the Air Force processed 1297 complaints, including 753 pending from the previous year and 540 new complaints.

Air Force ADR Rates in EEO Disputes Compared to Federal Government Average



Of these, the Air Force offered ADR in 589 cases, for an offer rate of 45%. The parties accepted ADR in 147, for an acceptance rate of 25%. The Air Force ADR offer rates in both informal and formal cases are much higher than the average among all federal agencies.<sup>[2]</sup> More importantly, the acceptance rates (i.e., cases that actually go to ADR) greatly exceed the federal agency average of 23% for informal complaints and 4% for formal complaints.<sup>[3]</sup>

As a result of the Air Force's consistently high ADR offer and acceptance rates, the EEOC's Office of Federal Operations selected the Air Force to participate in an ADR "best practices" study that is expected to be published sometime in 2004. Based on its reputation within the Office of Federal Operations, the Air Force was the first agency invited to participate in the study.

[1] EEOC Form 462 for FY 2003.

[2] EEOC Annual Report on the Federal Workforce, Fiscal Year 2002, available online at: [http://www.eeoc.gov/federal/fsp2002/part4.html#Section\\_1.2.3](http://www.eeoc.gov/federal/fsp2002/part4.html#Section_1.2.3)

[3] *Id.*

## **ADR Pays Off**

ADR, in both EEO and Non-EEO disputes, has been shown to divert cases from the complaint system, shorten processing times, and save money. The FY 2003 data only reaffirm that using ADR to resolve disputes at the earliest possible time and at the lowest organizational level helps keep tangible and intangible costs low.

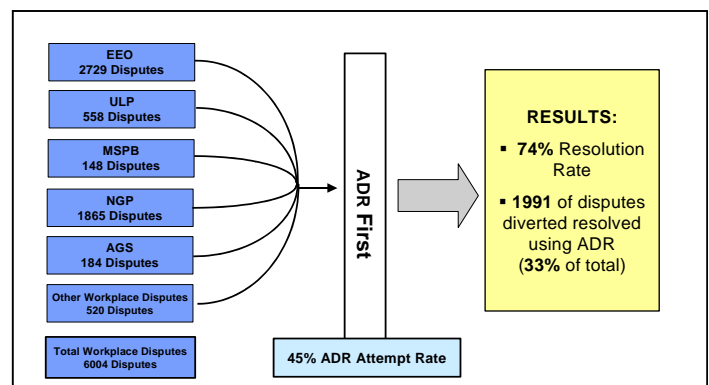
In FY 2003, the use of ADR diverted 544 disputes from the formal system, resolved another 143 at the formal stage, and eliminated a total of 1991 disputes, (one-third of all workplace disputes) from the complaint processing system.

In FY 2003 the average processing time for an EEO complaint was 440 days, where that time was shortened to 38 days for the informal stage and 17 days for the formal stage when ADR was used.

According to the Air Force's annual report to the EEOC for FY03,<sup>[1]</sup> 77% of EEO ADR efforts occurred during the informal stage of EEO complaint processing. An Air Force Audit Agency study of EEO processing costs underscores the importance of early ADR intervention and resolution (i.e., informal dispute level).

That study found that the costs of processing an informal EEO complaint to conclusion average approximately \$1,800 per case, while processing a formal EEO complaint to conclusion averages over \$16,000 per case.

More recent estimates from other agencies place the total cost of processing a formal EEO complaint through investigation and hearing as high as \$90,000.<sup>[2]</sup>



## Mediator's Corner

*Dear Marv the Mediator,*

***I am often frustrated by the parties' inability to see what would seem like obvious solutions to their dispute. Is there any way that I can propose solutions without compromising my impartiality or role as a mediator?***

Often a mediator has an idea, but rightly does not want to directly inject a solution into the process. After all, the goal is to find a solution reached by the parties. An extremely simple technique can allow a mediator to propose a potential solution or stimulate a brainstorming session. Simply suggesting the solution in the form of a question can be effective: "What if A were to do...." "Suppose you could commit...." "If M did this, could you do that...." "How would you respond if C promised to...." A good mediator will listen for clues about possibilities that will meet the interests of the parties. Putting those possibilities in the form of a question allows ideas to germinate. Even if the party responds negatively to the question, they may bring up a substitute option.

*Dear Marvelous Marv,*

***I recently participated in a mediation where the management representative was not confident in her level of authority to approve of a settlement agreement, which severely limited the available options. How would you suggest handling such a situation?***

Although the mediation coordinator should ensure that the management representative has authority to settle, it doesn't always happen. Even when the representative believes he or she has settlement authority, it is common for alternative solutions to arise that were not contemplated by management. This can be equally true for personal representatives of the complainant. The mediator should be prepared to ask who has the authority, and to insist that a telephone call be placed to that person. Often, if the mediator speaks personally with the authority and lays out the situation, progress will result.

Additionally, if information from another source, such as civilian personnel or finance, could move the parties towards settlement, the mediator should call from the mediation. If the appropriate party is not available, move up the chain. It has been particularly helpful in a number of mediations to bring a civilian personnel specialist into the session to educate the parties on what is or is not possible, and why.

## SAF/GCD Initiatives: AFI 51-1201 Implementation

Over the past year SAF/GCD has been working hard to publish the new Air Force Instruction 51-1201, governing ADR in workplace disputes. We're close to that goal. We recently completed two-letter coordination at Headquarters Air Force and national consultation with the unions. All that's left now is Secretarial approval. In anticipation of an early May publication date, SAF/GCD is partnering with AF/DPP to present a series of MAJCOM conferences to inform and help their bases implement the AFI, and to leverage ADR as an effective tool for meeting the potential challenges of the transition to the National Security Personnel System.

The purpose of these conferences will be to inform the field about the dispute resolution resources available from SAF/GCD and to educate base representatives about AFI requirements and assist them in implementing the ADR AFI at their local installations. SAF/GCD plans to provide the tools necessary for implementation, which will include mediation and interest-based negotiation training on request.

## Mediator Certification

Recent ADR program reports suggest that the Air Force has a cadre of more than 125 experienced mediators and 31 advanced mediators. In an effort to support the training and the personal effort of these mediators, SAF/GCD has assembled a small group of thoroughly experienced AF mediators to research and develop a Mediation Certification Program.

This project is still in its infancy stage, but some important issues under consideration are: the requirements for certification, an exam and/or number of career mediations; the maintenance of certified mediators, training and mediation requirements; and the process for certification. Most likely, mediators with a certain level of experience, particularly Air Force advanced mediators, will automatically be certified/credentialed because of the rigorous nomination and selection process one must undergo to attend and successfully complete the Advanced Mediation Course.

We are also seeking input from the 'troops in the trenches', as base mediators' first hand experiences and insights would be invaluable. If you have a viewpoint on the topic of mediation certification, please contact Dan Hartnett of SAF/GCD

[Daniel.hartnett@pentagon.af.mil](mailto:Daniel.hartnett@pentagon.af.mil). We will keep you informed of any developments.

# Best Practices

In the future this section will be reserved for examples the Air Force's best ADR practices. Every quarter we will solicit best practices from base Civilian Personnel and EEO staff and publish them as lessons learned for other ADR programs.

For this newsletter, we would like to take the opportunity to acknowledge bases that showed outstanding performance in the use of Alternative Dispute Resolution to resolve workplace disputes in FY 2003. One base was chosen from each MAJCOM for their dedication to the use of ADR and the excellence in which they executed their ADR program. We also recognized other bases that showed significant improvement and impressive performance in their ADR program.

These bases will receive Certificates of ADR Achievement and Honorable Mentions.

## ACC

### **Shaw AFB**

Davis-Monthan AFB—Honorable Mention

Whiteman AFB—Honorable Mention

## AETC

### **Tyndall AFB**

Goodfellow AFB—Honorable Mention

## Air Force Intelligence Agency (AIA)

## AFMC

### **Robins AFB (Tied)**

### **Tinker AFB (Tied)**

Eglin AFB—Honorable Mention

## AFRC

### **March AFB**

Dobbins AFB—Honorable Mention

General Mitchell AFB—Honorable Mention

## AMC

### **Andrews AFB (Tied)**

### **Travis AFB (Tied)**

Scott AFB—Honorable Mention

## AFSPC

### **FE Warren AFB**

Peterson AFB—Honorable Mention

## PACAF

Elmendorf AFB

## USAFE

Ramstein AFB

## Upcoming Training and Events

### MARCH

Negotiation and Appropriate Dispute Resolution Course (NADRC)

Basic Mediation Road Show – Kirtland AFB

(ADR Pays Off continued from page 2.) Moreover, there is some evidence that increased emphasis on ADR in EEO complaints helps reduce the number of complaints. Between FY97 and FY03, informal EEO complaints declined by 70% (on a normalized per-thousand basis) and formal complaints declined by 56%. We believe the Air Force conflict-management training combined with increased emphasis on ADR have materially contributed to that decline.

Much of the cost savings for the Air Force in Non-EEO disputes, as well as EEO disputes, is attributed to the intangible benefits associated with ADR. In his FY 2003 assessment of Edwards AFB's ADR program, Mr. Leslie Bordelon the Executive Director of the Air Force Flight Test Center made reference to the invaluable benefits of ADR. He noted: "ADR resolutions and settlements have allowed us to recover and shift resources marked for expensive and time-consuming litigation back to the mission...Our commitment to the Alternative Dispute Resolution Program makes Edwards Air Force Base a better place to live and work."

With ADR only being attempted in approximately 45% of all workplace disputes (40% in EEO and 50% in Non-EEO) there continues to be room for improvement and the potential for greater benefits to the Air Force.

[1] Air Force Annual Federal EEO Statistical Report of Discrimination Complaints for FY 2003 (EEOC Form 462), Parts X and XI.

[2] Department of the Navy, Guidance/Advice Memorandum #56, *Relationship of Negotiated Grievance Procedure and Discrimination Complaint Procedure* (Rev. April 2003).



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